

AMENDED IN SENATE JUNE 13, 2005

AMENDED IN SENATE MAY 10, 2005

AMENDED IN ASSEMBLY MARCH 29, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 641

Introduced by Assembly Member Montanez

February 17, 2005

An act to amend Section 11226 of the Business and Professions Code, relating to real estate, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 641, as amended, Montanez. Real estate time-shares.

Existing law, operative July 1, 2005, establishes the Vacation Ownership and Time-Share Act of 2004. The act requires a time-share plan developer to prepare, for issuance by the Real Estate Commissioner, a public report that fully and accurately discloses certain facts concerning the time-share developer and time-share plan. The act also requires an applicant preparing a public report for a time-share plan to present specified evidence for each accommodation of the time-share plan.

This bill would instead require an applicant preparing a public report for a time-share plan to present the evidence for each accommodation in each time-share property that is, or will be, offered for sale in California. The bill would also require an applicant preparing a public report for a multisite, time-share plan consisting of specific time-share interests affiliated with sites operated through the

time-share plan's reservation system to make certain certifications regarding accommodations and improvements.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11226 of the Business and Professions
2 Code is amended to read:

3 11226. (a) Any person who, to any individual located in the
4 state, sells, offers to sell, or attempts to solicit prospective
5 purchasers to purchase a time-share interest, or any person who
6 creates a time-share plan with an accommodation in the state,
7 shall register the time-share plan with the commissioner, unless
8 the time-share plan is otherwise exempt under this chapter.

9 (b) A developer, or any of its agents, shall not sell, offer, or
10 dispose of a time-share interest in the state unless all necessary
11 registration requirements are provided and approved by the
12 commissioner, or the sale, offer, or disposition is otherwise
13 permitted by this chapter, or while an order revoking or
14 suspending a registration is in effect.

15 (c) In registering a time-share plan, the developer shall provide
16 all of the following information:

17 (1) The developer's legal name, any assumed names used by
18 the developer, principal office street address, mailing address,
19 primary contact person, and telephone number.

20 (2) The name of the developer's authorized or registered agent
21 in the state upon whom claims can be served or service of
22 process be had, the agent's street address in California, and
23 telephone number.

24 (3) The name, street address, mailing address, primary contact
25 person, and telephone number of any time-share plan being
26 registered.

27 (4) The name, street address, mailing address, and telephone
28 number of any managing entity of the time-share plan.

29 (5) A public report that complies with the requirements of
30 Section 11234 or for a time-share plan located outside of the state
31 a public report that has been authorized for use by the situs state

1 regulatory agency and that contains disclosures as determined by
2 the commissioner upon review to be substantially equivalent to
3 or greater than the information required to be disclosed pursuant
4 to Section 11234.

5 (6) A description of the inventory control system that will
6 ensure compliance with Section 11250.

7 (7) Any other information regarding the developer, time-share
8 plan, or managing entities as established by regulation.

9 (d) An applicant for a public report for a time-share plan shall
10 present evidence of the following for each accommodation in
11 each time-share property that is, or will be, offered for sale in this
12 state pursuant to the registration:

13 (1) That the accommodation is presently suitable for human
14 occupancy or that financial arrangements have been made to
15 complete construction or renovation of the accommodation to
16 make it suitable for human occupancy on or before the first date
17 for occupancy by a time-share interest owner.

18 (2) That the accommodation is owned or leased by the
19 developer of the time-share plan or is the subject of an
20 enforceable option or contract under which the developer will
21 build, purchase, or lease the accommodation. Notwithstanding
22 this subdivision, the developer shall present evidence prior to the
23 receipt of a final public report that the accommodation to be sold
24 is owned or leased by the developer and that the accommodation
25 is free and clear of encumbrances in accordance with Sections
26 11244 and 11255.

27 (e) If an accommodation in a time-share plan is located within
28 a local governmental jurisdiction or subdivision of real property
29 in which the dedication of accommodations to time-sharing is
30 expressly prohibited by ordinance or recorded restriction, either
31 absolutely or without a permit or other entitlement from the
32 governing body, the applicant for a public report shall present
33 evidence of a permit or other entitlement by the appropriate
34 authority for the local government or the subdivision.

35 (f) (1) The developer shall amend or supplement its disclosure
36 documents and registration information, to reflect any material
37 change in any information required by this chapter or the
38 regulations implementing this chapter. The developer shall notify
39 the commissioner of the material change prior to implementation
40 of the change, unless the change is beyond the control of the

1 developer; in which event, the developer shall provide written
2 notice to the commissioner as soon as reasonably practicable
3 after the occurrence of the event necessitating the change. All
4 amendments, supplements, and facts relevant to the material
5 change shall be filed with the commissioner within 20 calendar
6 days of the material change.

7 (2) The developer may continue to sell time-share interests in
8 the time-share plan so long as, prior to closing, the developer
9 provides a notice to each purchaser that describes the material
10 change and provides to each purchaser the previously approved
11 public report.

12 (A) If the change is material and adverse to the purchaser, all
13 purchaser funds shall be held in escrow, or pursuant to alternative
14 assurances permitted by subdivision (c) of Section 11243, and no
15 closing shall occur until the amendment relating to the material
16 and adverse change has been approved by the commissioner.
17 After the amendment relating to the material and adverse change
18 has been approved and the amended public report has been
19 issued, the amended public report shall be sent to the purchaser,
20 and an additional seven-day rescission period shall commence.
21 The developer shall be required to maintain evidence of the
22 receipt by each such purchaser of the amended public report.

23 (B) If the commissioner refuses to approve the amendment
24 relating to the material and adverse change, all sales made using
25 the notice shall be subject to rescission and all funds returned.

26 (3) The developer shall update the public report to reflect any
27 changes to the time-share plan that are not material and adverse,
28 including the addition of any component sites, within a
29 reasonable time, and may continue to sell and close time-share
30 interests prior to the date that the amended public report is
31 approved.

32 (g) An applicant for a public report for a multisite, time-share
33 plan consisting of specific time-share interests, as defined in
34 subparagraph (A) of paragraph (2) of subdivision (z) of Section
35 11212, affiliated with sites operated through the time-share
36 plan's reservation system, shall certify both of the following:

37 (1) That a purchaser has, or will have, contractual or
38 membership rights to use accommodations at each affiliated site
39 and that, if an accommodation or promised improvement is, or

1 may become, subject to a blanket encumbrance, that the blanket
2 encumbrance is, or will be, subordinate to these rights.

3 ~~(2) That adequate provisions exist or will exist for the~~
4 ~~completion of all promised improvements for the~~
5 ~~accommodations.~~

6 *(2) That a certificate of occupancy has been issued with*
7 *respect to the accommodations at each affiliated site or that*
8 *adequate provisions exist or will exist for the completion of all*
9 *such accommodations. For any affiliated site accommodations*
10 *that are not complete, the public report shall clearly identify in*
11 *conspicuous type that those accommodations are not completed.*
12 *For any accommodations that are not complete and for which*
13 *adequate provisions for completion do not exist at the time the*
14 *public report is issued, the public report shall also provide in*
15 *conspicuous type that those accommodations might not be built,*
16 *provided, however, that a developer's failure to build the*
17 *accommodations shall not relieve the developer of any*
18 *obligations created by the certification made pursuant to this*
19 *subdivision.*

20 *(h) For purposes of subdivision (d) of this section, the*
21 *"time-share property being offered for sale in this state" shall*
22 *mean the following:*

23 *(1) With respect to a single site time-share plan, the*
24 *time-share property being registered pursuant to this chapter.*

25 *(2) With respect to a specific time-share interest multisite*
26 *time-share plan, the specific time-share property being*
27 *registered pursuant to this chapter.*

28 *(3) With respect to a nonspecific time-share interest multisite*
29 *time-share plan, all time-share properties in the time-share plan.*

30 SEC. 2. This act is an urgency statute necessary for the
31 immediate preservation of the public peace, health, or safety
32 within the meaning of Article IV of the Constitution and shall go
33 into immediate effect. The facts constituting the necessity are:

34 Assembly Bill 2252 of the 2003–04 Regular Session passed the
35 Legislature and was signed by the Governor with an
36 implementation date of July 1, 2005. In order to correct a
37 technical error contained in that measure prior to its effective

- 1 date, it is necessary that the provisions of this act take effect
- 2 immediately.

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